

Report on Community Payback Order Seminar (held February 2010)

**Scottish Consortium on Crime and Criminal Justice
&
Scottish Centre for Crime and Justice Research**

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Introduction

The Scottish Consortium on Crime and Criminal Justice and the Scottish Centre for Crime and Justice Research held a seminar in the Thistle Hotel, Glasgow on Tuesday 23rd February 2010 to discuss the community payback order which has been proposed by the Scottish Government in the Criminal Justice and Licensing (Scotland) Bill. The purpose of the seminar was to clarify the intentions behind the proposed new Scottish Order; how its success would be judged; and how it could be made both effective and acceptable, to sentencers, to the press and to the public.

The discussions took place under Chatham House Rules and are recorded by means of a written summary of what each of the opening speakers said, attributed to them. The general discussion which followed has been recorded on an unattributed basis. The seminar was chaired by Professor Alec Spencer, Convenor of the Consortium.

The purpose of this seminar was to clarify the following questions:

1. How will the success of the community payback order be *primarily* judged? By the amounts and forms of justice done (or payback delivered)? By reduction in reoffending? By reduction in short prison sentences?
2. What action is necessary for the community payback orders to ensure that, in line with the intentions of the Prisons Commission, they become the default penalty where seriousness or risk do not necessitate custody, and, in reality, community payback is used instead of prison?
3. What action is needed to make the community payback orders acceptable to the press and the public as an alternative to prison?

David Crawford, Head of Social Work, Glasgow City Council, looked at the proposed community payback order from a social work perspective. The expectation from the introduction of the new orders was that there would be an improvement in the quality of services, availability of the order in a wider range of courts, a reduction in the use of custody (although that had not happened as expected with the introduction of community service orders in the 1980's).

Mr Crawford felt that the non- custodial landscape had become very complex with the introduction of new orders such as Drug Testing and Treatment Orders. The introduction of the single community payback order would simplify matters. He felt that the potential of unpaid work had never been fully achieved in terms of public relations. The new community payback order might enable this to be done and a real step forward achieved. The full range of possibilities under the order would need to be used. It was also important to be more explicit about what was being done under the order. There might be a problem if community payback was not directly associated with unpaid work. The terms "support" and "supervision" were too vague. A major issue would be compliance. How strict should it be? The new order would need to be sold to the public. At present, the press described anything other than prison as "walking free". He felt the public had an appetite for unpaid work by offenders. There should be more talk about effectiveness and less about "toughness". Speed and immediacy of implementation were important. There must be doubts about whether a reduction in custody would be achieved. Community payback was possibly not the best name since not all on the sentence would be doing unpaid work.

However, expenditure constraints made this a difficult time to introduce a new order. He concluded by saying that there were at present too many community disposals. The rebranding of community sentences with the new order offered a great opportunity. There was a huge potential for unpaid work.

Angela Morgan, Chief Executive of Includem spoke of the contribution which the Voluntary sector can make to this process and with particular reference to 16 and 17 year olds. This age group were still in legal terms children. Offenders in this age group often had a background of neglect and lack of role models. If they had been on supervision through the children's hearings, it was important to have transitional support into adult systems for support for their continuing welfare needs, this is supported by research evidence

The proposed payback element of the order does not pose problems of principle for the voluntary sector and it is right that the interests of communities are taken into account in implementing the order. There needed to be evidence of payback as well as rehabilitation. She welcomed the flexibility in the order to provide special services, such as literacy, which

could tackle underlying problems relating to offending. It was necessary to be imaginative in the provision of services. There could be funding problems particularly for the voluntary sector. The loss of ring fencing could create real problems. For the most difficult to engage 16 and 17 year olds intensive support as well as supervision was essential as services might be rejected initially. It was necessary to persist. A welfare approach was not necessarily “soft” as challenge to damaging behaviours and to distorted thinking is a key element in the use of the relationship to bring about change . The Kilbrandon principles were still important.

Care for communities was also important and evidence of payback and rehabilitation were necessary.

Tom Halpin, Chief Executive of SACRO, also spoke from a voluntary sector perspective. He emphasized the need for public understanding of the community payback order and that community payback orders must not be part of a mechanical process built on SERs, attendance, all based on outputs rather than outcomes. It was necessary to demonstrate success. The reasons underlying offending – unemployment, homelessness etc must be dealt with. The majority of the community payback order was supervision and delivering supervision was an onerous task. No one agency could deliver all the needs of an effective order. So the voluntary sector had an important part to play in providing community payback orders. His view was that discussions at present are taking place around existing structures and he asked where solutions were being redesigned. Whilst central government was focused on legislation and the local authorities and the Community Justice Authorities waited for guidance, the danger was that we would end up re-inventing what we already do, only more visibly and more punitively, through strict monitoring. Did the public sector need to do all the community payback work? The voluntary sector could work well with anti-authority offenders and there were valid reasons of capacity that support third sector flexibility in any solution. Community payback should not simply be unpaid work but also should deal within the problems in offenders’ lives. He drew attention to the current inequality of imprisoning women simply due to an absence of alternatives and the need for community payback orders to create adequate placement opportunities. The new order was a great opportunity. It was necessary to be clear on the measures of success. It was important to involve the community and the voluntary sector.

Wilma Dickson, Deputy Director, Community Justice Services Division, Scottish Government addressed the three questions before the seminar. The three questions had a common answer. It was necessary to have efficient delivery of the new order, a target for rehabilitation, robust enforcement, and the demonstration of payback, both in work done and in change of behavior through reduction in offending. The new order was not primarily

about reducing the short term prison population. However, the promotion of the order reflected lower reconviction rates for community penalties compared with short prison sentences.

The question was who was to judge the outcome of the new order. Views on the outcome would depend on where a person lived, their personal experience of crime and the newspapers they read. The community would want to see efficient delivery, robust enforcement, quick action on breach and swift initial implementation of the order. The volume of payback was very important. Communities needed to decide what work was worthwhile. For instance, the clearance of snow by offenders had been very popular and had also had a big motivational effect on offenders.

Short prison sentences had very little chance to work in changing behaviour. Three weeks was the average time spent in prison under sentence by an offender sentenced to a sentence of 6 months or less. Under the Bill's proposals sentences of under 6 months would not in future be unavailable to sentencers but if they did impose a short sentence they would have to set out the rationale.

Monitoring and evaluation were very important. The Scottish Government was working with stakeholders towards personalized data collection which would allow the long term impact on individuals of their sentence to be studied.

Visibility was important for the press and the public. The local media were more interested and more willing to look at community penalties without preconceptions than the national media. It was necessary to celebrate success. Unpaid work would be the major focus but the longer term pay back of reforming behaviour was also important. There would be a focus on alcohol and drug treatments.

There would be a statutory requirement on authorities to consult annually with communities on the work to be done through payback. There would be sentences designed to meet the different circumstances of women offenders. Local authorities were being very helpful and realistic and responding creatively to the challenges involved.

Shadd Maruna, Director of the Institute of Criminology and Criminal Justice at Queen's University, Belfast spoke on a criminological view on community payback.

He suggested that we may be overselling the ability of the criminal justice system to reduce crime (the "effective" role, which emphasises instrumental approaches to penal change). Conversely, we might be underselling the symbolic role of the criminal justice system (the "affective" role, which emphasises the importance of emotions and punishment's symbolic

dimensions). Community payback might offer a third way between the “effective” and the “affective” roles. That is, we know that community-based sanctions are better at keeping offenders from going back to prison (effectiveness); they are also potentially of great “affective” value in that seeing offenders giving back to the communities they have harmed can send a powerful symbolic message of change and restoration. The approach to payback in England and Wales fully recognises the importance of punishment’s “affective” role, but focuses exclusively on *negative* emotions – offenders suffering harm and getting paid back for the harm they have done. The Scottish understanding of payback has a more reintegrative tone which can harness positive emotions that can improve public confidence and support. Ideally, the new sentence would produce a positive experience for the offender and a reduction in offending with a better outcome than with a punitive approach.

The Discussion

The following points were made in the general discussion.

Effectiveness

Effectiveness is not just a question of national key performance indicators. It is also a question of what an individual community thinks at a particular time about what is being done about crime in their area. In other words, effectiveness of any scheme must be understood from the perspectives both of offenders (and whether it has a positive impact on behaviour) and communities (and whether the sanction is felt to fulfill a stated need). The role of electronic monitoring needed to be considered. Its effectiveness on its own was questionable. The experience with young people showed the benefits of including intensive support.

Enforcement

Effectiveness fundamentally depends on the treatment of breaches. What are the best approaches to enforcement? A more sophisticated approach to breaches is needed to take account of the circumstances of offenders. The language of breaches and system of managing compliance means there are only ever opportunities to discuss things when they have gone wrong, rather than when they have gone well. Hence, there is a need for both incentives and sanctions. Defence lawyers increasingly challenge the facts underlying breach action as a result of formal adversarial management of compliance issues. The needs of offenders consequently are left unaddressed (if a challenge is successful) or subordinated to the penal consequence of non-compliance.

Partnership

Partnership between all the agencies was important. Much needed to be done in this area. Community Justice Authorities in some places have excellent relationships with partners and are embedded in community planning structures, but in other places are still having to justify to such partners the importance of working together. Health and housing were mentioned as essential partners to get on board.

Sentencers

The confidence of sentencers was very important. A quality product needed to be provided. At present, sentencers felt that a lot of community sentences were ineffective in reducing offending. This raises again the weakness of a compliance model in which sentencers are only provided information about failures. The model of problem-solving courts where participants return at regular intervals to report on progress, good or bad, has a robust evidence base suggesting effectiveness at reducing rates of given problems and also improving confidence of the courts. It was necessary to persuade many of the sheriffs of the benefits of community payback and also to provide all sheriffs with feedback on the outcomes of the orders.

Reducing offending

Different views were expressed on reducing offending through community payback. Some thought it a key aim, others a secondary aim. Given that most of the factors predictive of reoffending are outside the control of criminal justice agencies, the latter thought that setting reducing offending as a test of success was offering a hostage to fortune. This group thought fairness, justice and more content communities were more appropriate aims. There was a need to follow through on community sentences with continuing support and attention to such issues as jobs.

The reducing reoffending programme goes beyond the criminal justice system and extends into health and housing.

Communities

Communities needed to be engaged and empowered in community payback.

There was scope for closer working with community safety interests. Speed and immediacy were important. The introduction of community payback was not just a question of revising community sentences. It was necessary to consider community safety as well.

Resources

Resources would be a problem but limited resources could lead to more radical approaches and creativity. There was a risk that local authorities would protect their own services.

There was also a risk that the demands of the prison building programme might divert resources from developing community services.

Victims

It was important that the interests of victims should be considered in designing community payback. How was this to be done? Restorative justice would allow the community and the victim to be involved.

Public Education

There was discussion about the positive recent experience of using offenders to clear snow. It was popular in the community and also gave offenders a positive experience. The offenders were seen as “good neighbours”. It was important that community payback work was seen as worth doing. Visibility was important. There could be environmental benefits. Community service supervisors could be good role models for offenders. It was necessary to have good news stories. However, there could be resistance. A charity shop had refused to have offenders doing voluntary work.

Community sentences needed good marketing. At present, the public felt that a community sentence meant that the offender had “got off.” Yet, the situation did not appear rational with crime falling and the prison population rising. The Scottish public may not be as punitive as tabloid headlines would suggest. Public education strategies could be more effective if they assumed the communities they are targeting are reasonable and sensible about crime and punishment issues.